



Appeal Decision

Site visit made on 27 November 2023

by L Reid BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 January 2024

Appeal Ref: APP/B5480/W/23/3318429

31 Queenstown Gardens, Rainham RM13 8JJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Miss Denise Newell against the decision of the Council of the London Borough of Havering.
 - The application Ref P1539.22, dated 15 September 2022, was refused by notice dated 5 January 2023.
 - The development proposed is described as 'applied for drop kerb on my maisonette'.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023, updated 20 December 2023. Any policies that are material to this decision have not fundamentally changed in the Framework. As a result, I consider that there is no requirement for me to seek further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by my approach.

Main Issue

3. The main issue is the effect of the proposal on the living conditions of the occupants of No. 29 Queenstown Gardens with regard to noise, disturbance and fumes.

Reasons

4. No. 31 is a first floor maisonette in a two storey building, with No. 29 on the ground floor. The entrance to No. 31 is on the side of the building with a footpath from the road. The appeal site is the front garden area of No.31 and comprises paving and decorative gravel. It is directly adjacent to one of the windows of No. 29.
5. The installation of the dropped kerb would allow for vehicles to be parked in the front garden area. The Council's Residential Extensions and Alterations Supplementary Planning Document 2011 (the SPD) advises that the formation of parking spaces for first floor flats is unlikely to be acceptable where located adjacent to ground floor living room or bedroom windows of neighbouring accommodation due to potential disruption through noise.
6. Even if I were to accept that the ground floor window does not serve the living room of No. 29, at my site visit, I observed that this window has clear glazing.

It is therefore likely to serve a room in the flat whereby a reasonable level of protection from noise, disturbance and fumes would be expected.

7. Given the close proximity to this window, there would be noise and general disturbance from the opening and closing of the car doors, the loading and unloading of the car and its operations. Furthermore, should this window be opened, I cannot rule out the possibility that the occupiers of this flat would not be exposed to fumes from the car as it comes in and out of the site.
8. The plans showing where exactly a car would be parked on the site are limited. As such, based on the information before me, I cannot be certain that parking would not take place outside of the ground floor window. Even if a car were to be parked outside of the entrance to No. 31, there is no substantive evidence before me to show that this would sufficiently mitigate against noise, general disturbance, and fumes, given how close the window is.
9. For these reasons, I find that the proposal would have a significantly harmful effect on the living conditions of the occupants of No. 29 Queenstown Gardens with regard to noise, disturbance and fumes. Consequently, the proposal conflicts with Policy 7 of the Havering Local Plan 2016 - 2031 and the guidance contained in the SPD. When taken together, amongst other things, this policy and guidance seek development that protects the amenity of residents and does not result in unacceptable noise or disturbance.

Other Matters

10. I note that the appellant has discussed the proposal with the neighbouring occupier. However, a lack of objections from neighbours is not a determinative factor.
11. The proposal would allow the appellant to park close to their home. However, a grant of permission for the development would give rise to unacceptable harm to the living conditions of the occupants of No. 29. I attach substantial weight to this finding against the appeal. Consequently, the personal circumstances of the appellant do not outweigh the harm from the proposal.

Conclusion

12. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010 as the appellant has a protected characteristic for the purposes of the PSED, but the harm to the living conditions of the occupants of No. 29 would outweigh any benefits in terms of eliminating discrimination against persons with the protected characteristics, advancing equality of opportunity for those persons and fostering good relations between them and others. I therefore conclude that it is proportionate and necessary to dismiss the appeal. The proposal also conflicts with the development plan, read as a whole. There are no material considerations that have been shown to carry sufficient weight to indicate a decision otherwise than in accordance with it.
13. The appeal is therefore dismissed.

L Reid

INSPECTOR